IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 277 of 1991

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ASHOK DAHYALAL BHIL

Versus

STATE OF GUJARAT

Appearance:
MS RV ACHARYA for Petitioner
MR MA BUKHARI, APP, for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT
and
MR.JUSTICE A.L.DAVE

Date of decision: 08/11/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE A.L.DAVE)

1. This appeal arises out of a judgment and order rendered by learned Additional City Sessions Judge (Court No.15), Ahmedabad, in Sessions Case No.194 of 1990 on February 21, 1991, convicting the appellant-accused for the offence punishable under Section 302 of Indian Penal Code and sentencing him to undergo rigorous imprisonment for life and fine of Rs.200/- and further directing to undergo rigorous imprisonment for two months in case of default in payment of fine.

2. The appellant was charged to have committed the offences punishable under Section 302 of Indian Penal Code and Section 135(1) of the Bombay Police Act. The case of the prosecution was that the appellant-accused had a grievance against one Uday Anantrai Kulkarni on account of teasing of his sister by deceased-Uday Anantrai Kulkarni. It was the further case of the prosecution that on April 24, 1990, the accused assaulted deceased-Uday at about 12.00 noon in Bhilwadi, Amraiwadi area of Ahmedabad. In that assault, several injuries were caused to the deceased with a knife. On that day, the deceased, who was staying at Shankarnagar, near Rabari Colony, Amraiwadi, was proceeding towards his job when he was intercepted by accused and was questioned as to why he was teasing his (accused's) sister the previous day and, thereafter, he assaulted the deceased with knife and caused injuries in chest, abdomen and other parts of the body. When the deceased was assaulted upon by the accused, he raised shouts. The accused, therefore, ran away. The injured (deceased) was taken to L.G. Hospital wherefrom a Wardhi was sent to Amraiwadi Police Station. On receipt of that Wardhi, P.S.I. Jadeja rushed to the hospital at about 13.15 hours. Deceased-Uday was fully conscious and, therefore, his complaint was recorded and thumb impression was taken below the complaint. Thereafter, a Yadi was sent to the Executive Magistrate for recording dying declaration, on basis of which the Executive Magistrate, Mr. Tailor, came to L.G. Hospital and, after obtaining a certificate from the doctor about the patient being conscious, recorded the dying declaration of the deceased. At about 5.30 P.M., the deceased succumbed to the injuries. During the course of investigation, the Investigating Officer recorded statements of witnesses, got the postmortem performed, got the Panchnamas drawn and after apprehension of the accused, knife was discovered at the behest of the accused by drawing a Panchnama under Section 27 of the Indian Evidence Act. Muddamal clothes, weapon, etc. were sent to Forensic Science Laboratory, wherefrom report was issued. The investigating agency, having found sufficient evidence against the accused, filed

charge sheet against him in the Court of learned Metropolitan Magistrate (Court No.7), Ahmedabad. Since the case was triable exclusively by a Court of Sessions, the case was committed to the City Sessions Court and was registered as Sessions case No.194 of 1990. At that trial, charge was framed against the accused at Ex.1 for offence punishable under Section 302 of I.P.C. and Section 135(1) of Bombay Police Act, to which the accused pleaded not guilty. The case was, therefore, proceeded against him.

3. After considering the evidence led by the prosecution, statement of the accused under Section 313 of Code of Criminal Procedure was recorded, whereafter, considering the contentions raised, in light of the evidence, the learned Additional City Sessions Judge came to a conclusion that the prosecution had successfully proved the charges against the accused. After hearing the accused on question of sentence, the learned Additional City Sessions Judge sentenced the accused-appellant to undergo rigorous imprisonment for life with a fine of Rs.200/- for the offence punishable under Section 302 of Indian Penal Code and further directed to undergo two months rigorous imprisonment in case of default in payment of fine. The learned Additional Sessions Judge did not impose separate punishment for offence punishable under Section 135(1) of the Bombay Police Act. Aggrieved by the said judgment and order, the original accused has preferred this appeal.

4. Learned advocate, Mr. G. Ramachandran, submitted that the prosecution case has been erroneously accepted by the Trial Court. According to him, the case could have fallen under Section 304 of I.P.C. and not Section 302. To substantiate his submission, Mr. Ramachandran has drawn our attention to the dying declaration wherein the deceased himself has stated that the accused was excited and, therefore, he gave knife blows. Mr. Ramachandran submitted that the accused has undergone a sentence of about 10 years. He was a young boy of 17 years when the incident occurred and reason for the incident was such that any young boy would be agitated. Mr. Ramachandran, therefore, urged that the conviction may be reduced to one punishable under Section 304 of I.P.C. He has taken us through the record and proceedings of the case.

5. Mr. Bukhari, learned Additional Public Prosecutor, has opposed this appeal. According to him, the case is based mainly on dying declaration as there

are no eye-witnesses. The dying declaration does not suggest that the case can fall under any of the exceptions. He submitted that there is nothing to indicate grave and sudden provocation at the time of the incident. He, therefore, submitted that the learned Additional Sessions Judge has rightly considered the dying declaration in light of the number of blows inflicted by the appellant-accused upon the deceased, resulting into his death. The appeal, therefore, may be dismissed.

6. We have considered rival side contentions. As rightly pointed out, the case depends on a dying declaration recorded by the Executive Magistrate. The dying declaration is produced on record at Ex.10. If that is examined, there is an endorsement of the doctor in the margin that the patient was conscious. It is recorded in a question answer form and the deceased categorically implicates the accused. He said that somebody had misinformed the accused that the deceased had teased sister of the accused and, therefore, the accused had caused him injuries with a knife. He also said that the knife blows were given on the chest, below the armpit and abdomen, whereafter the accused ran away along with another person in his company. Under the dying declaration, thumb impression is taken. The Executive Magistrate-Umarsidhi Mahmadsidhi Gulamnabi Tailor has been examined at Ex.7. He states that, on receiving the Yadi, he went to the hospital at about 3.20 P.M. He went to the Ward. The patient was on the cot. There were no relatives or policemen near the injured. The doctor was there in the Ward. He, therefore, went to the doctor and ascertained about the condition of the patient and obtained his endorsement and, thereafter, recorded the dying declaration. We do not find anything to doubt this dying declaration.

7. Besides this, it requires to be noted that accused-appellant had taken a defence of alibi at the trial. In his further statement under Section 313, he stated that, on the day of the incident, he had gone to village Kadi in Mehsana district and was not in Ahmedabad on that day. The plea of alibi taken at the trial and plea of grave and sudden provocation run contrary to each other. In facts of the case, we are not inclined to accept this plea. We are not convinced about even possibility of grave and sudden provocation. We do not, therefore, accept this plea.

8. It also requires to be noted that the deceased had number of injuries on his person. As can be seen

from the postmortem note (Ex.41), he had as many as 6 external injuries and two internal injuries. Out of these injuries, internal injury No.1 was corresponding to external injury No.1 and internal injury No.2 was corresponding to external injury No.4. The injuries had pierced through the lungs and had damaged the respiratory system. The cause of death was shock and haemorrhage as a result of injury caused to the lungs. This reflects the intention of the accused. He has given repeated blows with knife.

8.1 It also may be noted that the weapon (knife) was discovered by the accused which was then sent to Forensic Science Laboratory for examination. The F.S.L. report indicates that knife carried human blood of group "O". It is also opined that the cuts found on shirt and trouser were possible with the muddamal-knife. All these factors taken together lead to one and only conclusion that the accused-appellant had caused fatal injuries to the deceased, which, as per medical evidence, were sufficient in ordinary course of nature to cause death of a human being. The number of injuries and the force with which the blows are given reflect his intention to cause death. We are, therefore, of a view that no error is committed by the learned Additional Sessions Judge in convicting the accused-appellant for the offence of murder.

9. We have gone through the judgment of the learned Additional Sessions Judge and are in agreement with the reasonings adopted by him while convicting the accused for the offence. We do not find any merit in the appeal and the appeal, therefore, deserves to be dismissed. The appeal is dismissed.

[MISS R.M. DOSHIT, J.]

[A.L. DAVE, J.]

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